



U.S. DEPARTMENT OF THE INTERIOR
OFFICE OF HEARINGS AND APPEALS

INTERIOR BOARD
OF
LAND APPEALS
MANUAL

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INTRODUCTION

This manual sets forth the procedures and practices followed by the Interior Board of Land Appeals (IBLA or the Board) in managing its adjudication of appeals. They are intended to be consistent with the provisions of applicable statutes, regulations, and the Office of Hearings and Appeals manual. If there is an inconsistency, those provisions govern. If special circumstances warrant, a procedure or practice in this manual may be varied at the direction of or with the approval of the Chief Administrative Judge.

PART I INTAKE AND DOCKETING (FOR ADDITIONAL DETAIL, SEE APPENDIX I)

Chapter 1 Receipt of Notice of Appeal

1. A person may appeal a decision of the Bureau of Land Management, the Minerals Management Service, or the Office of Surface Mining Reclamation and Enforcement, or a decision of an administrative law judge, under the procedures set forth in 43 CFR Part 4, subparts E and L. See, e.g., 43 CFR §§ 4.411, 4.1271, and 30 CFR 290.108. The agency office that receives a notice of appeal is expected to forward the decision and the accompanying administrative record to IBLA promptly. See Patrick G. Blumm, 116 IBLA 321, 334 (1990).

2. Docket numbers are assigned to appeals in the order the appeals are received. A new cycle of numbers begins at the beginning of each fiscal year, e.g., IBLA 2005-1 for the first appeal received on or after October 1, 2004. If a petition for reconsideration of an IBLA decision or order is filed, the docket number previously assigned to the appeal will be assigned to the petition, followed by an “R” indicating reconsideration, e.g., IBLA 2000-46R. Appeals remanded after judicial review normally are assigned a new docket number.

PART I INTAKE AND DOCKETING (FOR ADDITIONAL DETAIL, SEE APPENDIX I)

Chapter 2 Docketing the Appeal

1. After a docket number has been assigned to an appeal, the record and all related pleadings will be placed in an accordion file and the case file will be labeled with the docket number and the name of the appellant. If the record is too big for a case file, the box(es) containing it will be marked with the docket number. The case file (and boxes) are kept in the docket room unless the appeal is being actively worked on by a judge or attorney.
2. The docket number, name of appellant, agency, agency serial number, date of receipt, subject matter description, ABC [Activity Based Costing] code, and the fax number of the appellant or appellant's attorney, if available, are entered on a docket card. Docket cards are kept in an electronic file on the J:Drive. Also, hard copies of the docket cards are located in the docket room.
3. A case data sheet is completed and stapled to the cover of the record.
4. A standard acknowledgment letter that includes the docket number of the appeal, a request for the appellant's FAX number, a request for an electronic copy of any filing, and a notice concerning Alternative Dispute Resolution (ADR) is prepared, signed by the Chief Administrative Judge, and mailed to the appellant.

**PART I INTAKE AND DOCKETING (FOR ADDITIONAL
DETAIL, SEE APPENDIX I)**

Chapter 3 Notices of Appeal before Receipt of Case File

If a notice of appeal or other document that appears to initiate an appeal is received before the agency decision and accompanying record are received, and the notice of appeal or other document is accompanied by a petition for stay, the Docket Attorney will assign a docket number to the pleading. If no petition for stay accompanies the pleading, the Docket Attorney will place it in the “Undocketed Appeal” box in the docket room and will call for the record if it has not appeared within 7-10 days.

**PART I INTAKE AND DOCKETING (FOR ADDITIONAL
DETAIL, SEE APPENDIX I)**

Chapter 4 Updating the Docket Card

Every incoming or outgoing document in a pending appeal is recorded on the docket card, e.g., Statement of Reasons filed, 6/27/04. If a case file has been removed from the docket room, the judge or attorney to whom the appeal has been assigned should inform the Docket Attorney so it can be noted on the docket card.

PART I INTAKE AND DOCKETING (FOR ADDITIONAL DETAIL, SEE APPENDIX I)

Chapter 5 Examination of Case Files

1. Case files that do not contain any information protected from disclosure by the Privacy Act, 5 U.S.C. § 552a, or claimed to be confidential under 43 C.F.R. § 4.31 may be examined at the Board's offices by any member of the public during normal business hours by appointment with the Docket Attorney (phone 703-235-3750).
2. Case files that do contain information protected from disclosure by the Privacy Act or claimed to be confidential under 43 C.F.R. § 4.31 may be examined only in response to a request submitted in writing under the Freedom of Information Act (FOIA), 5 U.S.C. § 552, and only as required by that Act.
3. Prior to any examination of a case file, the Docket Attorney will review the file and remove any confidential or otherwise protected information.
4. The person examining a file must complete a record of the examination, showing name, date, and whom the person represents, which will be included in the file.
5. When necessary, a case file may be temporarily returned to the appropriate agency and made available for examination there.

PART II INITIAL REVIEW OF APPEAL

Chapter 1 Review of Jurisdiction and Motions for Unassigned Appeals

1. The Docket Attorney reviews all incoming and unassigned appeals to check for potential lack of jurisdiction (e.g., late notice of appeal, exceptions under 43 CFR 4.410) and for motions (e.g., motions to intervene; to dismiss; or to request an extension of time, expedited consideration, or consolidation) and refers any jurisdictional question or motion to the Chief Administrative Judge with the accompanying case file.
2. The Chief Administrative Judge, or a designee, authors orders addressing jurisdictional defects and responding to motions for all unassigned appeals.
3. After an appeal has been assigned, the lead judge will author orders addressing jurisdictional defects and responding to motions. See Part III, Chapter 2, Paragraph 1.

PART II INITIAL REVIEW OF APPEAL

Chapter 2 Review of Petitions for Stay

1. The Docket Attorney reviews all incoming appeals to identify petitions for a stay of the agency decision, and refers any petition to the Deputy Chief Administrative Judge or other designated judge with the accompanying case file. The Docket Attorney or the judge determines the date by which a stay must be granted or denied.
2. The Deputy Chief Administrative Judge, or other designated judge, authors orders responding to petitions for stay, upon consideration of the applicable criteria (e.g., 43 CFR 4.21(b) (1)(i)-(iv) and (2) and similar regulations), and issues them on or before 45 days after the end of the time for filing a notice of appeal. Other procedural motions filed in such appeals may be addressed at the time the petition for stay is resolved.
3. The Deputy Chief Administrative Judge, or other designated judge, reviews appeals that include a petition for stay to determine suitability for ADR. If direct negotiation seems appropriate, the judge will include language in the stay decision directing the parties to attempt to settle. If an appeal may be suitable for other types of ADR, the judge will refer the parties to the Department of the Interior's Office of Collaborative Action and Dispute Resolution.

PART II INITIAL REVIEW OF APPEAL

Chapter 3 Suspension of Cases in Alternative Dispute Resolution (ADR)

Upon notice from the parties that they have agreed to pursue direct negotiation or other types of ADR (whether on their own initiative, in response to the notice provided under Part I, Chapter 2, Paragraph 4, or in response to a decision under Part II, Chapter 2, Paragraph 3), the appeal is formally suspended on IBLA's docket and is tracked in an ADR docketing system pending completion of the ADR process.

PART III REVIEW AND DISPOSITION OF APPEALS

Chapter 1 Assignment of Appeals

“The Chief Administrative Judge of an Appeals Board may direct that an appeal may be decided by a panel of any two Administrative Judges of the Board, but if they are unable to agree upon a decision * * * may assign one or more additional Administrative Judges * * * to consider the appeal.” 43 CFR 4.2(a).

Currently, the Chief Administrative Judge assigns appeals to 2-judge panels, generally on a rotational basis (designating the lead and the panel member), taking into consideration statutory or regulatory deadlines, OHA priorities, and management considerations. Normally, petitions for reconsideration are assigned to the panel that decided the appeal.

PART III REVIEW AND DISPOSITION OF APPEALS

Chapter 2 Lead Judge Responsibilities

1. After an appeal has been assigned, the lead judge will respond to any incoming motions and may issue non-dispositive orders without the signature of the panel member, although consultation with the panel member is encouraged, as appropriate. A dispositive order requires the signature of both judges. An order referring an appeal for hearing by an Administrative Law Judge is considered a dispositive order.
2. The lead judge is responsible for drafting the order or decision (which may entail working with an attorney draft) and for the initial editing and proofreading. (See Part VI and Appendix II.) The draft order or decision will be properly formatted, at 1.5 spacing.
3. The lead judge is responsible for closing the case file once the decision or order has been issued (see Part IV).

PART III REVIEW AND DISPOSITION OF APPEALS

Chapter 3 Panelist Responsibilities

1. After the lead judge finalizes a draft order or decision, he or she delivers it and the case file to the panel member. The panel member is responsible for reviewing the draft order or decision, focusing initially on general organization and content. If the panel member is in general agreement with the draft, he or she should provide comments and suggestions (if any) for improving the draft, including issues of organization, content, grammar and usage, spelling, punctuation, etc. (See Appendix II.) If the panel member disagrees with the draft with respect to the outcome of the appeal and/or the legal analysis, the judges should proceed in accordance with Part III, Chapter 4.

2. For draft orders or decisions consisting of up to 25 pages of text (including necessary attachments, appendices, and exhibits), the panel member initially has up to 10 working days to respond. For draft orders or decisions consisting of more than 25 up to 50 pages of text, the panel member initially has up to 15 working days to respond. For draft orders or decisions consisting of more than 50 pages of text, the panel member initially has up to 20 working days to respond. If the appeal involves particularly complex issues or a lengthy record, additional time may be necessary, and the panel member will inform the lead judge of the need for more time. If more than the allotted time elapses before a response from the panel member and the panel member has not sought additional time to respond, then the lead judge will follow up with the panel member.

3. Subsequent reviews and actions by the panel member and lead judge with respect to revised drafts should normally be given the highest work priority.

PART III REVIEW AND DISPOSITION OF APPEALS

Chapter 4 Divided Panel

1. Panelists will make a good faith effort to resolve disagreements with respect to the outcome of an appeal and/or the legal analysis of the order or decision. If, however, within 15 working days after the lead judge receives a response from the panel member, the panel is unable to resolve disagreements, the lead judge will inform the Chief Administrative Judge, who will assign an additional judge, on an established random basis, to the panel to consider the appeal. Prior to making such an assignment, the Chief Administrative Judge may meet with the panel to attempt to resolve their disagreement.
2. The additional judge will have 15 working days from the date of the assignment to review the draft or drafts and the case record and to respond to the panel orally or in writing of his or her opinion in the appeal.
3. When a majority decision is reached, the three panelists will determine which judge will draft the majority, dissenting, and, possibly, additional opinions (e.g., concurring, or concurring in part and dissenting in part). Those opinions will be completed within 15 working days of the additional judge's response.

PART III REVIEW AND DISPOSITION OF APPEALS

Chapter 5 Circulation of Draft Orders and Decisions for Comment

1. Draft decisions and orders (with certain exceptions, as determined by the Chief Administrative Judge) are copied and distributed to all judges for comment, including already circulated draft orders or decisions that have been substantially revised. The circulation period begins the day after a draft has been submitted for circulation, and the circulation period ends on the final day at the close of business (5:00 pm). Drafts must be properly formatted, at 1.5 spacing, reviewed for proper grammar and style, and then submitted for circulation no later than 4:30 pm in order for the following business day to be counted as the first day of circulation.

2. For draft orders and decisions consisting of up to 25 pages of text (including necessary attachments, appendices, and exhibits), the circulation period will be 5 working days. For draft orders and decisions consisting of more than 25 up to 50 pages of text, the circulation period will be 10 working days. For draft orders and decisions consisting of more than 50 pages of text, the circulation period will be 20 working days. The Chief Administrative Judge may determine that a longer circulation period is necessary for a particularly complex draft order or decision, and if an already circulated draft order or decision has been substantially revised, the Chief Administrative Judge may require recirculation for a period to be determined on a case-by-case basis.

3. Judges not assigned to the panel will review drafts and offer the panel substantive comments, when appropriate, before the close of the circulation period. (See Appendix II.) Substantive comments will be provided to all the judges on the Board.

4. Incidental comments regarding grammar and usage, spelling, punctuation, etc. (see Appendix II) may be accepted, rejected, or modified by the lead judge without further consultation with his or her panelist or the commenter.
5. The lead judge will confer with the panel member about all substantive comments received. The panel must provide a response to all substantive comments to all the judges, indicating what changes to the draft, if any, the panel proposes to make to satisfy the comments, explaining the reasons for its response, and offering to discuss the matter further with the commenter(s). If, after discussion (which must be concluded within 3 working days of whenever it begins), the panel declines to accept a comment and the commenter wishes to request a hold of the draft order or decision in accordance with Part III, Chapter 5, Paragraph 2, the commenter will notify the panel and the Chief Administrative Judge in writing and will have 2 working days in which to secure additional votes for a hold.
6. A commenter may request that a draft decision or order that has been revised be recirculated under this chapter. If the panel disagrees that the draft has been revised to the extent that recirculation is needed, the lead judge will inform the Chief Administrative Judge, who will decide whether or not the draft will be recirculated.
7. If a draft decision or order is recirculated, the lead judge must note on the cover sheet the reasons for recirculation, highlight the changes to the draft in bold font, and notify the entire Board by an e-mail message briefly explaining the changes.

PART III REVIEW AND DISPOSITION OF APPEALS

Chapter 6 Holding a Draft Order or Decision

1. The Chief Administrative Judge may place a hold on a draft order or decision on his own behalf by written notice to all judges of his decision to do so, including his rationale.
2. The Chief Administrative Judge will place a hold on a draft order or decision when he receives requests for a hold from three judges, either within the circulation period (if the panel has already rejected substantive suggestions during that period) or following the circulation process during the 2-day period in Part III, Chapter 5, Paragraph 5. A dissenting opinion in a circulating decision will be considered as a request for a hold by the judge who authored the dissent.
3. Each request for a hold must be based on the judge's independent review of the circulating opinion(s), will be in writing, and will state specific reasons for the request. The reasons may include agreement with a dissenting opinion or a memorandum of another judge. Requests for a hold will be addressed to the Chief Administrative Judge, and copies will be provided to all other judges. The Chief Administrative Judge will provide notice of the hold in writing to all judges.
4. If a draft order or decision is held, the panel will work with the Chief Administrative Judge or the judges who requested the hold to attempt to resolve the issues of concern.
5. If the panel can resolve the issues raised by the judge(s) who requested or imposed the hold by revising the draft, then the panel will circulate the revised draft as provided in Part III, Chapter 5.

6. If the panel cannot resolve issues within 10 working days of notice of the hold, the Chief Administrative Judge will announce a meeting of all judges (Board Meeting) to discuss the appeal, normally to be held within 15 working days of the announcement.

PART III REVIEW AND DISPOSITION OF APPEALS

Chapter 7 Procedure Following Announcement of a Board Meeting to Discuss a Held Appeal

1. The case file for the held appeal will be returned by the lead judge to the docket room within 48 hours of the announcement of the Board Meeting. The case file will be available in the docket room for review by all judges prior to the Board Meeting. All judges are encouraged to review the case file, to the extent necessary to contribute to the Board Meeting and the resulting decision making process.

2. The Chief Administrative Judge presides and maintains order at the Board Meeting.

3. Presentations will be made first by the majority, then by the minority and/or holding judges, followed by general discussion and questions.

4. Following the general discussion, the Chief Administrative Judge will determine, following an expression of the preferences of the administrative judges present, whether the appeal can most effectively be disposed of (1) by the current 2- or 3-judge panel, (2) by assigning an additional judge to consider the appeal and author or join a majority or dissenting opinion (when the appeal has been held on the basis of the original 2-judge panel's decision), or (3) by assigning all administrative judges attending the meeting to consider the appeal and either join a majority or dissenting opinion or author an additional opinion.

PART III REVIEW AND DISPOSITION OF APPEALS

Chapter 8 Schedule for Drafting and Review of Opinions Following a Board Meeting

1. The case file will be made available to the authors of the draft majority and dissenting opinions, which will be completed within 15 or fewer working days following the Board Meeting, at which time the case file will be returned to the Docket Room. These opinions will then be circulated concurrently for comment to all judges attending the Board Meeting for 5 working days.
2. Substantive comments on the draft opinions will be provided in writing to the authors of the draft opinions, with copies to all judges.
3. Revisions of the draft majority and dissenting opinions, if any, will be completed within 5 working days after completion of circulation of the drafts and then these opinions will again circulate to all judges for 5 working days for final comments and for the preparation of any other opinions. If there are no revisions to the draft majority or minority opinions, all judges will be given notice that they have 5 working days for the preparation of any additional opinions. If any separate opinions are prepared, they will be circulated to all judges for an additional 3 working days.
4. If after circulation and consideration by the authors of final comments, there are any substantive revisions of any opinion, it shall be circulated for 3 working days, highlighting the changes in bold. If not, all opinions will be finalized and signed, consistent with Part IV, Chapters 1 and 2, within 5 working days.

**PART IV ISSUING FINAL ORDERS AND DECISIONS
(FOR ADDITIONAL DETAIL, SEE APPENDIX
III)**

Chapter 1 Preparing Final Orders and Decisions

1. The lead judge, or his or her designee, prepares the final order or decision in accordance with Part VI. Dissenting or additional opinions are prepared in final by the authoring judge or his or her designee in accordance with Part VI.
2. The lead judge is responsible for ensuring the proofreading of the final order or decision and for making any final corrections; the author of any dissenting or additional opinion is responsible for the proofreading of that opinion. Team proofreading is encouraged.

**PART IV ISSUING FINAL ORDERS AND DECISIONS
(FOR ADDITIONAL DETAIL, SEE APPENDIX
III)**

Chapter 2 Signatures

1. The lead judge signs the final version of the order or decision, and takes it for signature to each concurring judge along with the circulating draft. If a concurring judge is absent and has left a written authorization for use of his or her signature stamp, the signature stamp may be used on the final order or decision. The author of a dissenting or additional opinion signs his or her opinion.
2. The final signed version of an order or decision must be submitted for issuance and distribution no later than 4:30 pm in order to be dated as of that day. A final order or decision that is submitted after 4:30 pm will be dated, issued, and distributed the next business day.

PART IV ISSUING FINAL ORDERS AND DECISIONS (FOR ADDITIONAL DETAIL, SEE APPENDIX III)

Chapter 3 Closing the Case File

1. The lead judge is responsible for closing the case file.
2. Final orders must include a list of “Appearances” that provides names and addresses of the parties as well as of any others who are to receive copies of the order. If possible, FAX numbers should be included for all parties who appear in the appeal.
3. Final decisions should be accompanied by an “Address Sheet” containing the names and addresses of all parties and others who are to receive a copies of the decision as well as the date the appeal was ripe for decision, normally 30 days after the last substantive pleading was received.
4. Generally, all pleadings will be two-hole punched and placed in the case file on the metal fasteners in reverse chronological order, with the most recent document on top. All items that are not part of the record should be removed from the case file.
5. The case file must be assembled and closed in accordance with this Chapter within 5 business days of issuance of the final order or decision that disposes of the case.
6. On the day a decision is issued, an electronic version of the final decision, as signed (and any accompanying appendices or exhibits), is sent to the person designated for entering decisions into ISYS and preparing decisions for posting on the OHA website.

**PART IV ISSUING FINAL ORDERS AND DECISIONS
(FOR ADDITIONAL DETAIL, SEE APPENDIX
III)**

Chapter 4 Distribution of Final Orders and Decisions

1. All final Board orders and decisions are copied for distribution and mailing to the parties and others on the list of appearances or address sheet.
2. If all parties have provided fax numbers, final orders or decisions will be sent by fax with follow-up copies by regular mail. If the document is not faxed to the parties, it will be sent by certified mail, return receipt requested, or by overnight mail. All other recipients are sent copies by regular mail. The original of the order or decision is placed in the case file.

**PART IV ISSUING FINAL ORDERS AND DECISIONS
(FOR ADDITIONAL DETAIL, SEE APPENDIX
III)**

Chapter 5 Record-keeping and Returning the Case File

Disposition of the appeal and receipt of the final order or decision is recorded on the docket card. Case files of appeals disposed of by order are generally returned to the appropriate agency office immediately, while those of appeals disposed of by decision are retained until expiration of the time for filing a petition for reconsideration.

PART V INTERNAL MANAGEMENT

“The Chief Administrative Judge * * * is responsible for the internal management and administration of the Board, and * * * is authorized to act on behalf of the Board in conducting correspondence and in carrying out such other duties as may be necessary in the conduct of routine business of the Board.” 43 CFR 4.2(c). This includes the functions described above; staff attorney assignments; approval of any office-related travel or training; approval of administrative judges’ leave and time sheets; and responding to communications from the public, the Department, or members of Congress.

The Chief Administrative Judge may refer written inquiries concerning the status of appeals to the Docket Attorney.

PART VI DECISION/ORDER WRITING REQUIREMENTS

1. Decisions and orders are prepared using IBLA templates found on the R: drive, in accordance with the OHA Style Manual, Strunk & White's The Elements of Style, the U.S. Government Printing Office Style Manual (2000), and the latest edition of The Bluebook: A Uniform System of Citation. Disagreements concerning the proper style, citation, etc., will be resolved by the Chief Administrative Judge. (See also Appendix II.)
2. Headnote topics should conform to those listed on the most recent topical index, which is posted on the S: drive.
3. The most common disposition alternatives are: affirmed, affirmed as modified, reversed, vacated, set aside, dismissed, and remanded. For guidance, consult the explanations in Appendix IV.
4. All decisions, orders, dissenting opinions, and additional opinions (e.g., concurring, or concurring in part and dissenting in part) must accurately state the material facts, legal issues, and applicable law. They will be concise and discuss only matters relevant to the issues presented by the appeal.
5. An administrative judge will avoid ad hominem, derisive, intemperate or other language not consistent with judicial demeanor in any majority, dissenting, or additional opinion, or in any order.
6. As a guideline, no decision or order should exceed 20 pages single-spaced, and no dissenting opinion or additional opinion (e.g., concurring, or concurring in part and dissenting in part) should exceed 10 pages single-spaced.

7. An Administrative Law Judge's opinion may be adopted in whole or in part in a Board order or decision when it is in the interest of economy of resources to do so.

PART VII EX PARTE CONTACTS

43 CFR 4.27(b) prohibits any communication concerning the merits of a proceeding between (1) any party to the proceeding, or any person interested in the proceeding, or any representative of a party or interested person and (2) any Office of Hearings and Appeals personnel involved or who may reasonably be expected to become involved in the decision making process of that proceeding unless the communication is made in the presence of all other parties or their representatives (if it is an oral communication) or it is furnished to all other parties (if it is written).

“Proceedings,” “interested person,” and “person interested in the proceeding” are defined in 43 CFR 4.27(b). Proceedings include pending appeals, rulemakings that might affect a pending appeal, and requests for reconsideration or review by the Director.

43 CFR 4.27(b) does not prohibit communications concerning appeal status or advice concerning compliance with procedural requirements unless the area of inquiry is an area of controversy in the proceeding.

Any oral communication made in violation of the prohibition must be documented with a memorandum to the file written by the person who received the communication; a copy of the memorandum must be included in the record and provided to all parties, who must be given an opportunity to respond.

Any written communication shall be included in the record and a copy provided to all parties, who shall be given an opportunity to respond. Normally, an order (“Ex parte communication provided”) is prepared giving the parties 30 days to respond to a copy of the memorandum or written communication if they wish to do so.

If it is not clear from a document that service was provided in accordance with 43 CFR 4.413 and no proof of service (see 43 CFR 4.401(c)(2), as amended June 5, 2003, 68 FR 33803)) is made, an order (“Completion of service”) may be prepared that includes a copy of the document or directs a party to serve it and gives all adverse parties 30 days to respond if they wish to do so.

PART VIII REQUESTS, MOTIONS, AND PETITIONS

Chapter 1 Requests for Limiting Disclosure of Confidential Information

43 CFR 4.31(a) provides procedures for a person who submits a document to request that it be regarded as exempt from public disclosure under the Freedom of Information Act (FOIA), 5 U.S.C. § 552, under 18 U.S.C. § 1905, or otherwise. Under those circumstances, the information submitted is not disclosed except as provided in FOIA (see 43 CFR Part 2, subpart B) or upon a request from a party that is submitted under 43 CFR 4.31(c). See Taylor Energy Co., 143 IBLA 194 (1998).

If documents submitted as part of the record by an agency are designated “confidential,” they (or the entire case file) should be kept in a blue Special Attention Mail envelope.

PART VIII REQUESTS, MOTIONS, AND PETITIONS

Chapter 2 Requests for Oral Argument

The Board may grant oral argument in its discretion, either at the request of a party or on its own initiative, when it appears clarification of the issues would be aided by the opportunity to inquire of counsel. 43 CFR 4.25. The recommendation of a panel or other administrative judges that oral argument be granted must be approved by the Chief Administrative Judge. Oral argument may be conducted in person or via videoconference or teleconference. It will be transcribed or recorded for the record. The Chief Administrative Judge will issue an order to the parties at least ten days in advance stating the time, place, and method of the argument.

An oral argument will normally be conducted in Arlington, Virginia, unless it involves a land selection under the Alaska Native Claims Settlement Act, in which case it will be conducted in Alaska “for good cause shown.” See 47 FR 26391 (June 18, 1982). In other kinds of appeals, the Chief Administrative Judge must approve oral arguments at locations other than Arlington.

PART VIII REQUESTS, MOTIONS, AND PETITIONS

Chapter 3 Requests for a Hearing

The Board may refer an appeal to an administrative law judge for a hearing to present evidence on a matter of fact, either at the request of a party or on its own initiative. 43 CFR 4.415 If a party requests a hearing, the Board may issue an order requesting the party to explain what specific issues of material fact require a hearing, what evidence concerning these issues must be presented by oral testimony, what witnesses need to be examined, and what evidence could be presented in documentary rather than oral form.

If the Board orders a hearing, it will specify the issues upon which it is to be held. The order may authorize the administrative law judge to include other issues, either at the request of a party or on his or her own initiative.

PART VIII REQUESTS, MOTIONS, AND PETITIONS

Chapter 4 Motions to Intervene

If a person files a motion to intervene and demonstrates that it could have independently brought the appeal it seeks to participate in or that its interests could be adversely affected by the outcome of the appeal (e.g., if the agency decision were overturned), the IBLA will normally grant the motion. For intervention in appeals under the Surface Mining Control and Reclamation Act of 1977, see 43 CFR 4.1110.

A person may file such a motion at any time and the IBLA should grant or deny it promptly. If the Board denies intervention as a party, it may grant the person *amicus curiae* status.

PART VIII REQUESTS, MOTIONS, AND PETITIONS

Chapter 5 Motions to Consolidate

When there are common or related issues of fact or law and it would be more efficient to consider those issues together, the Chief Administrative Judge (if the appeals are unassigned) or the lead judge, with the concurrence of the Chief Administrative Judge, may consolidate (or unconsolidate) two or more appeals at any time upon motion of a party or on the Board's initiative.

PART VIII REQUESTS, MOTIONS, AND PETITIONS

Chapter 6 Motions to Expedite Consideration

When it would be in the public interest to do so, the Board may expedite consideration of an appeal, either in response to a motion from a party or on its own initiative. It may be in the public interest, for example, to consider an appeal ahead of when it would normally occur if a decision on appeal would establish a precedent that would be helpful, or if a party is facing particularly exigent circumstances (e.g., a short construction season or contractual obligations).

PART VIII REQUESTS, MOTIONS, AND PETITIONS

Chapter 7 Petitions for Reconsideration

The IBLA may reconsider a decision or an order in extraordinary circumstances for sufficient reason. Extraordinary circumstances include, but may not be limited to, an error or misinterpretation of fact or law in the decision, a new development in the law, or the availability of new evidence that demonstrates an error in the decision (if its previous absence from the record is explained). The lead judge on an appeal may order a party to submit an answer to a petition for reconsideration. Petitions for reconsideration are to be decided promptly.

Depending on the circumstances, either an order or a decision may be employed if a petition for reconsideration is granted. If the rationale is changed, normally a decision is preferable.

PART IX CERTIFYING AN APPEAL RECORD

If a Board order or decision is appealed to federal court, the lead judge is responsible for signing an affidavit, prepared by the Docket Attorney, certifying the record as complete. The Docket Attorney prepares a letter of transmittal that accompanies the case file to the clerk of court, the Department of Justice, the office of a U.S. Attorney, or the Office of the Solicitor.

If the Secretary or Director exercises jurisdiction over an appeal in accordance with 43 CFR 4.5, and the case record is in the possession of the Board, the Docket Attorney will insure that the case record is timely transmitted to the appropriate office and that evidence of receipt by that office is maintained by the Board.

APPENDIX I, INTAKE AND DOCKETING

IBLA PROCEDURES FOR FILINGS RETRIEVED FROM THE IBLA MAIL ROOM, RECEIVED BY MESSENGER DELIVERY, OR TRANSMITTED BY FAX

[BY MAIL] The Main Interior mail delivery person comes into 801 N. Quincy between 9:15 and 9:45 am daily to deliver the Interior Department mail for OHA. (It is a good idea to watch for this delivery from Main Interior because the delivery person can alert you to any delays in receiving mail or any problems with outgoing mail for the Main Interior Building.) Mail for the INTERIOR BOARD OF LAND APPEALS will be on the appropriately marked mailbox shelf in the mail room. The Main Interior delivery person will return in the afternoon, usually between 1:30 and 2:15 pm.

The regularly addressed mail for 801 N. Quincy is usually delivered by the US Postal Service carrier between 11:00 am and 1:30 pm daily. The mail carrier will generally deliver special delivery mail for which a signature is required to the IBLA Reception/Administrative Area where the Support Staff will usually sign for it.

[BY MESSENGER] The Federal Express messenger usually makes his first delivery between 8:30 and 9:30 am and again around 4:00 pm. Other express package carriers will stop by with their deliveries at various times throughout the day, but such delivery is not as consistent. These messengers will usually deliver to the IBLA reception area, where the Support staff will usually sign for the delivered packages. Messenger delivery will often include items intended for the Director-OHA and other Boards. Those offices must be alerted when deliveries have been received for them. The transmittal envelope containing deliveries for IBLA should be date stamped and taken to the Docket Room for processing.

[BY FAX] Faxes of documents for filing that come to IBLA (703-235-8349) (machine is in the Reception/Administrative Area) should be date stamped, stapled, and taken to the Docket Room for processing.

Check the individual items and examine the address carefully. Is it a routine mail package? Or is there a suspicious look to the mail, i.e., soiled, misaddressed mail label, fluid or suspicious powder leaking from it? Is the package damaged? You may have to let the sender know that you did not receive the entire contents. Also check to see that the package should be with INTERIOR BOARD OF LAND APPEALS and not another office.

Take all mail (packages, envelopes, boxes, tubes, etc.), deliveries, and faxes into the IBLA DOCKET ROOM for processing, which involves the following 5-step operation.

1. Open the envelope, box, or package and check to ensure the contents are properly with IBLA as sometimes it may be intended for the Director-OHA or another Board.
2. Stamp the incoming motion, letter, file, or fax. EVERY DOCUMENT RECEIVED BY THE BOARD IS DATE STAMPED. Check FIRST to see if the stamper is set to the correct

date. Then date-stamp the transmittal envelope for all items except case files sent by BLM (as long as you date stamp the cover letter). It is also a good idea to date stamp the mailing label of any incoming file, box, tube, etc. Attach envelopes to the back of the filing (staple, binder clip, or rubber band), noting the file number in pen on the envelope in the event it gets separated and it must be located later in order to verify the mailing date.

(Note: If you are busy, i.e., staff meeting, meeting with supervisor, assisting judges, etc., date stamp the envelope until you can return and open the mail.)

For items pertaining to cases already docketed, write the docket number on the filing. Use an ISYS search to determine docket number if not readily identifiable. If there is doubt regarding the item, check with the docket attorney.

3. Docket the incoming filing. Check FIRST to see if the Docket Attorney or others are using the Docketing System. If the Docket computer is available to use, log into the IBLA docket system.

For filing documents for appeals already docketed: When the Docket Card data appears on the screen, check that the case number is the same as the one on the incoming document and compare the case information on the docket card with the content of the filing. Check this each time you enter data. It is not unusual for appellant, counsel, BLM, or the Solicitor's office to use an incorrect Docket Number, so you **MUST CHECK THIS EACH TIME YOU USE THE SYSTEM**. Enter the date for the filing, identify the party filing, and note the content matter, e.g., Request for Extension of Time, Motion for Dismissal, Motion for Reconsideration, etc. When a document is noted to the database, the individual entering the information should initial the document next to the date stamp. If the document is a fax, that fact should be noted on the docket card. When the original document is received, the fact that it is the original should be noted.

For docketing new appeals: Date stamp the transmittal memorandum attached to the case file or the appropriate document. The appeal should be docketed promptly by the Docket Attorney or Support staff.

For documents received before the related case file has been received: A case is docketed before receipt of the case file only when the Board has received a copy of a request for stay, a withdrawal of the appeal by the appellant, or a request for remand from the agency involved in order that it might correct its own decision. The Docket Attorney or Support staff communicates with the agency involved or the Solicitor's Office to determine when the case record will be received.

4. Print the Docket Card as soon as the data has been entered. In addition, enter the initials of the Administrative Judge to whom the appeal has been assigned on the upper right hand corner of the incoming mail and place the document into the Administrative Judge's mail box. If the case is not assigned and no action is required, the document should be put into the

case file folder. (Where action is required, such as a motion, the document will be given to the Docket Attorney; see *infra*.)

In the event a Motion is filed (Dismiss, Reconsider, Clarification, Consolidation), copy the front page and the service page, or last page, and place the copied pages in the reading file marked "MOTIONS FILE" (left side of the folder for the current month).

For simple motions, a draft Order will be prepared by the assigned Legal Assistant. The case file and draft Order will be given to the Docket Attorney for review. After the draft has been finalized, the prepared Order is put into the Administrative Judge's mailbox for signature.

5. Cut the Docket Card to fit the Docket Filing System and file. Docket Cards should be filed each day, as some appeals are particularly active and it is extremely important to the Administrative Judge and Docket Attorney that ALL Docket Cards are up-to-date.

The ISYS index for the docket cards is updated daily by the Docket Attorney, so prompt and consistent entry of cases is important.

Special Considerations

Returned mail. When any order or decision is returned by the post office, that fact should be noted on the docket card. If the Board still has the file, an attempt should be made to find another address in the file. If there is no other address, the returned envelope is placed in the case file. If the Board no longer has the file, the envelope is sent to the agency to be placed in the file.

Appeals docketed twice. On those rare occasions that an appeal is docketed twice, the Docket Attorney should be consulted.

Multiple Appellants. The Docket Attorney should be consulted where several parties appeal from the same decision to decide whether to docket as one appeal or to mark as related cases.

Several Decisions appealed together under one Notice of Appeal. The Docket Attorney should be consulted.

DOCKETING INCOMING APPEALS

YOU MAY ENTER THE IBLA DOCKETING SYSTEM ONLY BY PASSWORD AND IF YOU HAVE BEEN IDENTIFIED IN THE SYSTEM (BY OHA'S COMPUTER SECURITY SPECIALIST) AS ONE WHO HAS AUTHORIZED ACCESS. Upon entering the system, you should search for the party by name in the Docket System to ensure that an appeal in the matter is not already pending before the Board. You should also search the deciding agency identifying codes to further ascertain whether the matter is pending before the Board.

You should familiarize yourself with the incoming notice of appeal and determine whether the appeal is a MINERAL or NON MINERAL case. Refer to the Chart on the wall above the Docket Computer. If you have questions, consult the Docket Attorney.

Enter the IBLA Docketing System and retrieve the PENDING form, which will display the CASE DATA SHEET as a form on the computer. You will enter the following data:

1. IBLA DOCKET NUMBER. This number is found on the running tick sheet maintained by the Docket Attorney and contains the following handwritten information: Assigned Panel of Judges (by initials), IBLA appeal case number, docket code (usually 3 alpha letters). This information is then typed at the end of each month. The original handwritten chart is kept near the Docket Computer.

2. NAME OF THE APPELLANT(S). Typed in capitals.

3. INDICATE 'T'. Type "T" for true in pending dialogue.

4. BRIEF DESCRIPTION OF THE APPEAL BEING DOCKETED. For example: ALJ dismissed - no ownership interest; Veteran - no map or land description.

5. DATE RECEIVED. Example: 2004/04/06

6. CODE: Extract this information from the Code Sheet near the Docket Computer, e.g., MINERAL, NON MINERAL land appeal codes.

7. SERIAL NUMBERS: lead_serno. Usually the identifier assigned by the deciding office in BLM, MMS, OSM, or Hearings Division.

8. STATE SERIAL NUMBER: serno1, serno2, serno4. If needed, type in additional numbers.

9. ABC CODE: serno3 (placed here so that it is always in the same place on the docket card). Look for these codes in the listing kept near the Docket Computer.

10. NAME OF APPELLANT. Type the last name first and in lower case.

11. APPEARANCES. Type the name of the party who is appearing, or submitting notice of appeal. This may be an individual or counsel representing the party. Type the name of any official, or the Solicitor, who appears for the agency if indicated. A backward bracket (]) is used to delineate the line break in the address. Where available, enter the fax number of the party at the end of the address.

12. PANEL MEMBERS ASSIGNED. This involves input from the Docket Attorney.

After the data is entered, you will proceed to print out the Docket Sheet, Case Data Sheet, the Assignment Memo, and the Acknowledgment Letter. You start by placing the prepared letterhead already signed by the Chief Administrative Judge in the print tray upside-down (top of letterhead facing out towards you), put two (2) pieces of blank white bond paper on top of the form letter, and close the tray. You are ready to print. Type: "Do Docket". The program will ask for the IBLA number and, after it is entered, the appropriate documents will be printed.

APPENDIX II, DECISION/ORDER DRAFTING, EDITING, AND REVIEW PROCESS

Shown below are key steps in the overall writing process for IBLA orders and decisions, from initial drafting and editing to reviewing and final proofreading.

The **lead judge** is responsible for the key steps in the **drafting** process (which may entail working with an attorney draft to ensure that all the necessary elements have been satisfied):

- D1. General organization – introduction, statement of facts and procedural history, issues presented, legal analysis following logical outline, conclusion/case disposition.
- D2. Content – facts/procedural history stated accurately and concisely, with citations to record where necessary; legal points supported by authority and argument; quotations exact; analysis clear and persuasive; conclusion follows from analysis and leads to proper disposition.

The lead judge is also responsible for the initial **editing** and **proofreading** process. While the job of drafting is to do justice to the content, the job of editing is to do justice to the reader. Ideally, the Lead Judge should wait a day or more after finishing a draft before editing and proofreading it, to build in some distance from the drafting process. Editing should also be done in stages, rather than trying to focus on all the steps at once. Key steps at this stage are as follows:

- E1. Review for elements in D1-2.
- E2. Strong introduction – context, focus, legal point, practical point, roadmap.
- E3. Structure (macro) – hierarchy of sections and subsections; each section/subsection with own road signs, transition, mini-introduction, conclusion.
- E4. Structure (micro) – topic sentence for each paragraph; old info before new, including link to previous paragraph; sentences varying in structure and length; longer sentences broken into chunks; subject, verb, and object kept together; wordiness and nominalizations avoided; judicious use of quotations; parallel constructions.
- E5. Grammar and usage – active/passive voice, subject/verb agreement, pronoun/antecedent agreement, proper tense sequence; eliminating sentence fragments, run-on sentences, comma splices, misplaced modifiers; etc.
- E6. Style – tone, word choice, figures of speech, reader orientation.
- P1. Spelling, capitalization, punctuation, omitted or doubled words, plurals and possessives, etc.

- P2. Abbreviations, citation format, italics, numbers, spacing, ellipsis, other Style Manual issues.

Steps E2 through E4 should receive greater attention if the document is a **decision** than if it is an **order**. See OHA Style Manual Appendix B for additional details on steps E2 through E4. For a summary order, these steps may receive scant attention, if any.

In general, appeals presenting issues of first impression should be disposed of by decision, while appeals controlled by well-settled Board precedent should be disposed of by order, unless it is necessary to update that precedent. Because orders are not precedential, they generally should not require as much detail as decisions and should be shorter.

Once the Lead Judge is done with the draft, he or she gives it to his or her **panel member** to review, edit, and proofread. The panel member is responsible initially for step E1 above. Unless the panel member decides, based on the initial review, that he or she will be writing a separate opinion or concurring only in the result reached in the draft, the panel member is also responsible for steps E5 and P1. (In addition, if the panel member sees a problem with the draft related to steps E2 through E4, E6, or P2, he or she may note it on the draft.) The panel member should also comment if he or she believes the appeal should be disposed of by decision rather than order, or vice versa.

Once the lead judge and panel member are done with the draft, they circulate it to all the **reviewing judges**. They are responsible for identifying substantive problems with the draft, if any. The **review** process focuses on the following:

- R1. Factual and legal errors/misstatements, flaws in legal analysis or conclusion, wrong disposition.
- R2. Significant lack of clarity such that reader would not be able to understand what is being said.

(In addition, if a reviewing judge sees a problem with the draft related to steps E5 or P1 above, he or she may note it on the draft.) A reviewing judge should also comment if he or she believes the appeal should be disposed of by decision rather than order, or vice versa.

Once the circulation process has been completed, the draft is given to the **proofreaders** for final **proofing**. They are responsible for steps P1 and P2 above.

APPENDIX III, ISSUING FINAL ORDERS AND DECISIONS

DECISIONS

1. *Preparing the Final Decision.* The lead Administrative Judge is responsible for preparing the Decision. After the appropriate circulation period, the circulation copy will be returned to the Administrative Judge to indicate that the document is ready to be issued. The Judge will then review all comments received during circulation and make the appropriate changes to the Draft. The Judge should then arrange for the Final to be printed (with the proper date and pagination inserted), proofed, and signed. Pagination is determined by the chart maintained in the Administrative Office (Room 300) by the Support staff. The necessary data to be entered on this chart includes the decision date, the appeal number and name, the judges signing the decision (by initials), and the pages assigned to the decision.

The signed and dated Decision shall be attached to the case file, prepped so that all extraneous materials have been removed, and given to the Support staff. A disk with the Decision (as printed in final) should be provided at this time for inclusion in the N-drive/Website database.

The Judge is also responsible for providing an APPEARANCE (or Address) Sheet, with the appropriate information, so that the parties can be identified and proper mailings accomplished. A RIPE DATE must be entered. If possible, a disk or e-mail with this information should be provided the Support staff to facilitate preparing the mailing envelopes or labels.

2. *Reviewing the Final Decision.* The Support staff preparing the Decision for dissemination should check that the document is correct and in proper form and ensure that the document is properly dated and signed.

3. *Faxing the Decision.* The Support staff will then fax the Decision to those parties with Fax numbers listed in the Appearance Sheets. The Support staff will stamp the confirmation copies returned from the machine with the "FAXED" stamp and note the date thereon. *Note:* All parties receiving the Decision by fax should also receive a "hard" copy by regular mail; all parties that cannot be faxed the Decision will be sent a copy by certified mail.

4. *Copying the Final.* The Support staff will make two single-sided copies of the Decision, one for the printer and one for the specialist maintaining the N-drive/Website. The Support staff will then make a double-sided copy of the Decision to be mailed to each of the appearances and 17 double-sided copies to be distributed to the following: Director, Principal Deputy Director, Hearings Division, Library, Master Book, Rocky Mountain, Inside Energy, Jim Coffin/Public Land News, Lexus, Westlaw, (2) Solicitor's Office, (2) Chief Administrative Judge, Judges' Book, Attorneys' Book, Reading File, Dispositive File.

5. *Preparing for Mailing.* The Support staff will prepare envelopes and mail copies of the Decision in accordance with the ADDRESS sheet prepared. The Support staff will extract

the necessary appearance and address information from the attached disk or e-mail with attachment in order to print the envelope from the computer.

6. *Preparing Return Receipts and Finalizing the Return Receipt Log.* The Support staff will prepare (type or write) USPS Return Receipt (Green Card) for the parties listed in the Address Sheet who did not receive a copy by Fax, noting thereon the IBLA Docket Number and entering the appropriate name and address. The Support staff will also prepare the additional USPS Green and White Certified Mail Receipt. The Green and White Certified Mail Receipt goes onto the front of the envelope; a strip from that form is placed on the Certified Mail Receipt Form (Green Card). The Support staff will, at an appropriate computer terminal, enter the program CERTIFIED MAIL 2004, go to the end of the form RETURN RECEIPT LOG, and ENTER the 20-digit US Postal Service Certified Mail Receipt Number into the first column. The Support staff will then ADD the name(s) of the addressees, their complete addresses, including zip code. The Support staff will TAB over to the Return Receipt Log column and ENTER the IBLA Docket Number of the case and a description, e.g., Dec. (date), Case File(date). The Support staff, upon entering the Return Receipt information, will SAVE the data and EXIT the log.

7. *Recording the Decision in the Database.* The Support staff should enter the proper notation for the Decision into the Docketing System by entering the program, when it is available, and adding that information to the docket card database. The Support staff should print a new Docket Card, cut it to fit the Docket Filing Shelf, replace the old Docket Card with the new one printed.

8. *Filing the Double-Sided Copies.* The Support staff should place one copy (1) in the Reading File and one (2) in the Dispositive File (these files are maintained in the open lateral file shelves across from the Docketing computer). The Support staff should also place a copy (3) in the Master Volumes maintained in the Docket Room. Two copies (4, 5) are for the Chief Judge, one to be placed in the Chief's box and one to be put in his binder.

The Support staff should then place a copy (6) for the Director, a copy (7) for the Deputy Director, a copy (8) for the Solicitor, and a copy (9) for the Mineral Resources Division in the appropriate holding tray in the Support staff's Area (these copies are distributed weekly to these parties—the Docket Attorney should be consulted before these copies are sent). The Support staff should then place copies in the appropriate trays in the Supervising Paralegal Assistant's Area for (10) Rocky Mountain Mineral Foundation, (11) Matt Spangler/Inside Energy, (12) Jim Coffin/Public Land News, (13) Lexus, (14) Westlaw. (These copies are periodically distributed to these parties per individual arrangements.)

The Support staff should also place a copy (15) in the decision notebook maintained for the judges, as well as one (16) in the decision notebook maintained for the attorneys. Finally, the Support staff should take the final two copies to the Mailroom and place one (17) in the box for the Hearings Division and one (18) in the box for the Library.

9. *Filing the Single-sided Copies and the Case File, and sending Copies to the Printer.* The Support staff should rubber band the ORIGINAL onto the lead case file and put that file into the lateral file drawers in the Docket Room. The Support staff should place the first one-sided copy (NO staples, fastened with a paper clip covered with plain bond paper) in the tray maintained by the Supervising Paralegal Assistant on her desk. This is the copy to be sent to the Interior Department's Printer. The Support staff should then place the second copy, along with an e-disk containing the decision in its final form (pagination, etc.), in the tray outside Room 300 for the Specialist maintaining the N: Drive/Website.

10. *Sending Copies to the Printer.* Copies of the Decisions to be sent to the Printer are held until several have accumulated.

When enough decisions are ready to be sent, the Support staff will put a blank cover sheet on each decision (attaching the decision together with a paper clip) and mark the cover sheet "SET *" in sequence (e.g., "SET A" for the first decision, "SET B" for the next decision, and so forth). Instructions and forms (DI 14) for sending to MIB Printing Plant are in a black binder maintained in the Administrative Area. Preparing this form will require that the cumulative number of pages and number of decisions be ascertained. All other data may be gleaned from past forms found in the binder. After the form has been completed, insert it and the decisions into a large (12x16) manila Messenger Envelope to be sent to: Frances Thomas, Printing, Room 1063, Mail Stop 1427 MIB. The envelope should then be placed in the mail room to be sent to Main Interior.

11. *Filing the Address Sheet.* The Support staff will file the Address (Appearance) Sheet in the notebook maintained for that purpose, located in Room 342.

12. *Returning the Case File.* When a case is disposed of by decision, the case file is returned to the agency involved immediately if the agency decision is reversed. If the agency is affirmed, the file is kept for approximately 30 days. If there is reason to expect a request for reconsideration, or that the appellant will go to court, the Board holds the file longer. The Board will also keep files for decided cases if those files will be of use in appeals still pending before the Board. These files are generally kept in the lateral file cabinets beneath the mail boxes. The size of the file might require that the file be kept elsewhere.

When returning a case file to the appropriate office, the Support staff should first refer to the Docket Card and the Case Data Sheet that is stapled onto the case file to verify if there are any boxes, exhibits, tubes, or other items that will have to be returned. If any part of the case file is missing, check with the Attorney or Administrative Judge. The Support staff should prepare an envelope or mailing label for the case file (and exhibits, boxes, tubes, etc.) being mailed. All envelopes, exhibits, tubes, boxes, envelopes, padded mail bags must have a USPS Return Receipt Card plus the Receipt Form as well. An additional note to the green card should be added if the package being mailed is a box, tube, or other unusual container.

When a case file is sent back to an agency, the docket card receives a blue tag on the left side. The tag is moved to the right side for a case on reconsideration. When the Board receives

proof that the agency has received the file, the blue tag is replaced with a red tag and the fact that the agency has received the file is noted on the docket card. Note that the tag will be on the right side if the case was decided on reconsideration. (This information is memorialized on a note card taped to the top of the docket card file holder in the docket room.)

DISPOSITIVE ORDERS

1. *Preparing the Order.* The lead Administrative Judge is responsible for preparing the Final Order. After the appropriate circulation period, the circulation copy will be returned to the Administrative Judge to indicate that the document is ready to be issued. After addressing the comments received regarding the Draft, the Judge should then arrange for the final to be printed (with the proper date inserted), proofed, and signed. The signed and dated Final Order shall be attached to the case file, prepped so that all extraneous materials have been removed, and given to the Support staff. A disk with the Order thereon or an e-mail with the Order attached should be provided the Support staff at this time in order that the addresses may be extracted for preparing mailing envelopes.

2. *Reviewing the Final Order.* The Supervising Paralegal Assistant should carefully review the Final Order to check that the document is correct and in proper form, to ensure that the docket number of the case file corresponds with the Order, and to see that the document is properly dated and signed.

3. *Faxing the Order.* The Support staff should check to see if the Fax numbers in the Order are current and if they agree with the FAX numbers in the case file. The Support staff will then fax the Order to those parties with Fax numbers. The Support staff will stamp the confirmation copies returned from the machine with the "FAXED" stamp and note the date thereon.

4. *Copying the Order.* The Support staff will then make a copy of the Dispositive Order to be mailed to each of the appearances and copies to be distributed as follows: Administrative Judge who authored the Order, IBLA binder, Director, Principal Deputy Director, the Solicitor, Peter Schaumberg (Minerals Division) (if it is a non-procedural, on-the-merits disposition), BLM State Director (or MMS/OSM as appropriate), Specialist maintaining N-Drive/Website, Reading File, Dispositive File.

5. *Placing the Order in the Case File.* The Support staff will write in pen on the lower left-hand side of the first Page of the ORIGINAL document "Case" and place this Final Order on top of the other documents in the lead case file.

6. *Mailing the Order.* The Support staff will prepare mailing envelopes in which to send a copy of the Dispositive Order to each of the appearances. For those parties not receiving the Order by fax, the mailing will be sent by certified mail. For those parties receiving a fax, the mailing will be sent by regular mail. A copy of the Order will be sent by regular mail to the BLM State Director (or MMS/OSM, as appropriate).

7. *Preparing the Case File for Return.* The Support staff should prepare an envelope or mailing label for the case file (and exhibits, boxes, tubes, etc.) to be returned to the agency. All envelopes, exhibits, tubes, boxes, envelopes, padded mail bags in which case file material is returned must be sent by certified mail.

8. *Preparing Return Receipts and Finalizing the Log.* For all items to be sent by certified mail, the Support staff will prepare (type or write) a USPS Return Receipt (Green Card), noting thereon the IBLA Docket Number and entering the relevant name and address. (E.g., the parties indicated in the document under APPEARANCES not receiving a fax, the agency to whom the file is being returned.) The Support staff will also prepare the additional USPS Green and White Certified Mail Receipt. The Support staff will, at an appropriate computer terminal, enter the program CERTIFIED MAIL 2004, go to the end of the form RETURN RECEIPT LOG, and ENTER the 20-digit US Postal Service Certified Mail Receipt Number into the first column. The Support staff will then ADD the name(s) of the addressees, their complete addresses, including zip code. The Support staff will TAB over to the Return Receipt Log column and ENTER the IBLA Docket Number of the case and a description, e.g., Disp.Ord (date), Case File(date). An additional note should be added if the package being mailed is a box, tube, or other unusual container. The Support staff, upon entering the Return Receipt information, will SAVE the data and EXIT the log.

9. *Recording the Order.* The Support staff should enter the proper notation for the Order into the Docketing System by entering the program, when it is available, and adding that information to the docket card database. The Support staff should print a new Docket Card, cut it to fit the Docket Filing Shelf, replace the old Docket Card with the new one printed, and place a BLUE plastic tag over the card (Blue tags indicate that the case has been disposed. When confirmation has been given that the case file was properly received by the agency, a RED plastic tag will replace the Blue one.)

10. *Filing the Copies.* The Support staff should mark two copies in the lower right-hand corner with the notation “mailed [date]” and place one copy (1) in the Reading File and one (2) in the Dispositive File (these files are maintained in the open lateral file shelves across from the Docketing computer). (If a motion is involved, an additional copy should be made and placed in the Motions File.) The Support staff should place the copy (3) for the Administrative Judge in his or her mail box.

The Support staff should then place a copy (4) in the IBLA binders maintained in Room 339 and a copy (5) in the wood box outside Room 300 for the N: Drive/Website. The Support staff should then place a copy (6) for the Director, a copy (7) for the Principal Deputy Director, a copy (8) for the Solicitor’s Office, and a copy (9) for the Mineral Resources Division (if provided) in the appropriate shelves in the Supervising Paralegal Assistant’s Area (these copies are distributed weekly to these parties – the Docket Attorney should be consulted before these copies are sent).

11. *Recording with the Supervising Paralegal Assistant.* The Support staff should record the IBLA Docket Number and panel names on the lead judge and concurrence list maintained by the Supervising Paralegal Assistant.

NON-DISPOSITIVE ORDERS

1. *Preparing the Order.* The Administrative Judge is responsible for preparing the Order. When it is presented to the Support staff for transmittal, it should have been proofed, signed, and dated. If possible, a disk with the Order thereon or an e-mail with the Order attached should be provided at this time in order that the addresses and fax numbers may be extracted.

2. *Reviewing the Order.* The Supervising Paralegal Assistant should read the Order to check that the document is correct and in proper form, to ensure that the docket number of the case file corresponds with the Order, and to see if the document is properly dated and signed.

3. *Faxing the Order.* The Support staff sending the Order should check to see if the Fax numbers in the Order are current and if they agree with the Fax numbers in the case file. The Support staff will then fax the Order to those parties with Fax numbers. The Support staff will stamp the confirmation copies returned from the machine with the “FAXED” stamp and note the date thereon.

4. *Copying the Order.* The Support staff will then make copies of the Order to be mailed to each of the appearances and to be placed in the Reading File (and the Motions File, if applicable). The Support staff will write in pen on the lower left-hand side of the first page of the ORIGINAL document “Case” and return this document to the Administrative Judge to be placed in the lead case file.

5. *Mailing the Order.* Utilizing the disk or e-mail with the Order attached, the Support staff will prepare envelopes in which to send copies of the Order. For those parties receiving the Order by fax, their copies will be sent by regular mail. For all others who are to receive the Order (except for extensions of time), copies will be sent to them by certified mail. Extensions of time will be sent by regular mail.

6. *Preparing the Return Receipt and Finalizing the Log.* The Support staff will prepare (type or write) a USPS Return Receipt (Green Card) for each mailing that is to be certified, noting thereon the IBLA Docket Number and entering the name and address of the parties to receive the certified mailing. The Support staff will also prepare the additional USPS Green and White Certified Mail Receipt to attach to the certified receipt. The Support staff will, at an appropriate computer terminal, enter the program CERTIFIED MAIL 2004, go to the end of the form RETURN RECEIPT LOG, and ENTER the 20-digit US Postal Service Certified Mail Receipt Number into the first column. The Support staff will then ADD the name(s) of the addressees, their complete addresses, including zip code. The Support staff will TAB over to the Return Receipt Log column and ENTER the IBLA Docket Number of the case and a description, e.g., Order (date), Case File(date). The Support staff, upon entering the Return Receipt information, will SAVE the data and EXIT the log.

7. *Recording the Order.* The Support staff should enter the proper notation for the Order into the Docketing System by entering the program, when it is available, and adding that information to the docket card database. The Support staff should print a new Docket Card, cut it to fit the Docket Filing Shelf, replace the old Docket Card with the new one printed.

TRACKING AND RECORDING MAIL SENT THROUGH THE POST OFFICE OR MESSENGER SERVICE

[FEDERAL EXPRESS MESSENGER SERVICE]

BEFORE YOU EXPRESS MAIL. You should determine whether the cost of sending FedEx mail is feasible. (In April 2004 it was noted that a routine mailing of an 8-ounce envelope cost \$10.01 using FedEx overnight – mailing at \$4.70, with a surcharge of \$5.31 for deliver to a routine mailing address. The amount of \$10.01 is an expensive option for delivery of a single envelope, keeping in mind that Appearances can be two or more. Multiplying that \$10+ fee could mean that even more money is spent on a single Order or Decision. Would FAXING, followed up by a US Postal Service Return Receipt mailing (about \$4 for a single business size envelope), be an option?)

PREPARING YOUR EXPRESS MAILING

1. You will need current and correct information to send a package, envelope, or other item. You might have to phone the recipient office to verify the correct address and telephone number (which is required on the FedEx USA Airbill).

2. The item (box, envelope, etc.) to be sent should have already been wrapped, taped, or packaged. If not, you may be able to use the FedEx mailing cardboard envelope (8x10), the longer legal size cardboard envelope (smaller case file size), or the FedEx legal size (11x17) waterproof mailing envelope.

Using a preprinted (OHA agency address is already supplied by FedEx) FedEx USA Airbill, you will type the recipient's address and telephone number in the appropriate space. The FedEx supplies are kept in the grey metal supply cabinets in the Mailroom. Additionally, there are FedEx mailing tubes (for maps, exhibits, etc.) in the 2nd Floor supply room.

After you have typed the Airbill, separate the original copy from the perforated form and retain it for your records. It will be used to track the FedEx mailing. You will then put the completed form into the clear plastic adhesive-backed holder and attach the holder to the package.

3. The easily-identifiable (white, orange, and blue) FedEx metal drop-off container is on G1 (second door to your left, opposite the mailboxes). You will deposit the FedEx envelope/package into this container. The FedEx Messenger will usually pick up from this drop-off by 5:30 weekdays.

In the event you are mailing an item for immediate, overnight handling, you may phone FedEx (1-800-463-3339) and request a messenger come to the office (remind them that we are at Suite 300, 801 N. Quincy).

TRACKING

To track a Federal Express item, you will first phone 1-800-463-3339 and follow the voice-recorded messages. When you are requesting proof of delivery information, the voice recording will ask for a Fax number and a TELEPHONE number. As soon as you indicate you want a Printed Receipt faxed to you, the recording invariably says that is not available. STAY ON THE LINE: dial "O" and a FedEx operator will assist you. You will ask for a FAXED receipt proof of delivery.

RECORDING THE RECEIPT

When the proof of delivery has been received, such receipt information should be recorded. Using the IBLA DOCKETING SYSTEM, you will enter the date of receipt and the name of individual who signed for the FedEx package. Print out a new DOCKET CARD and file. File the FedEx receipt in the Metal Return Receipt File box on the table near the Xerox machine.

[US POSTAL SERVICE]

When mail is sent certified, the Return Receipt, or Green Card, will be returned via regular mail. You should date-stamp this green card (on the front near the Board's address) and enter the appropriate information regarding receipt of the item sent into the docket card database, noting date received and the party signing the receipt. A new docket card should be generated and filed. Then you will take the green card and file it in the appropriate filing box located near the Xerox machine. Receipt of the Green Card should also be noted by checkmarking that item on the Receipt Log.

In the unusual event a green card is not timely returned (a fact that will be noticed when entering additional items in the Receipt Log), you will need to track this item with the US Postal Service. To track mail sent certified will require you to have the 20-digit US Postal Service Certified Mail Receipt Number from the USPS Return Receipt (Green Card) being tracked. This number was entered into the Receipt Log and is also on the white and green receipt. You may call the Washington General Mail Facility (which handles the mail for Main Interior) at 202-636-2290 or the US Postal Service main number at 1-800-275-8777 (who will likely direct you to the Washington General Mail Facility). Provide them with the necessary information and they will assist you in determining the status of the certified item.

If a case file or other such item is involved, you should check with the agency to determine whether the case file was indeed received. If not, let the Docket Attorney know as soon as possible.

WHEN MAIL OR FILES ARE RETURNED

If mail which has been sent is returned as undelivered, first check to see if the address is correct and current. If there is a possibility that the address can be verified by other means (telephone call, etc.), check the address in that fashion. If nothing about the address is in error as best as can be determined, put the returned item in the case file. If the case file has already been returned, send the item to the agency to include it in the case file.

In the unusual event that a case file or other such item is returned and preliminary inquiries reveal no mistakes in addressing that item, inform the Docket Attorney about the situation as soon as possible.

APPENDIX IV, COMMON DISPOSITION ALTERNATIVES.

<u>Affirmed</u>	For use when the Board is in complete, or nearly complete, agreement with the decision below. A decision should be affirmed even if the Board corrects non-substantive errors, e.g., dates or citations, that do not affect its soundness.
<u>Affirmed as Modified</u>	For use when the result reached by the decision below is correct and no relief is afforded the appellant, but the Board finds the basis for the result was incorrect in whole or in part. If the Board does not change something in the decision below, e.g., if it affirms on the basis of only one of three reasons given, then “affirmed as modified” is not appropriate. Similarly, if the Board agrees with the basis of the decision below but adds a reason of its own, that is not a modification. To “modify” a decision, the Board must change something substantive in it.
<u>Reversed</u>	For use when the Board finds the result in the decision below is incorrect and provides the correct result in a way that disposes of the case. However, it is possible to “reverse and remand” without disposing of a case, e.g., in a contest proceeding.
<u>Vacated</u>	For use when the Board finds the result in the decision below is incorrect, but offers no result of its own. Usually indicates a need for further adjudication, but the Board does not indicate what the outcome of the further adjudication should be.
<u>Set Aside</u>	For use when the Board cannot determine whether the decision below is correct or not, e.g., because supporting evidence in the record is inadequate, critical facts were assumed but not established, or the decision was rendered prematurely. A decision that is set aside is no longer in effect, but it does not prevent the agency from re-issuing the same decision, if the record supports it.
<u>Remanded</u>	Used in conjunction with Reversed, Vacated, or Set Aside, when the Board returns a decision to the agency below that made it, with instructions to initiate, continue with, or repeat an aspect of the adjudication process. A remand is not appropriate if merely ministerial actions are required following disposition of the appeal.
<u>Referred</u>	For use when the Board refers an appeal to the Hearings Division for an hearing on an issue or issues of fact.
<u>Dismissed</u>	For use when an appeal is disposed of, usually on procedural grounds such as an untimely notice of appeal or failure to file a statement of reasons, or a request to withdraw an appeal, without discussion of the merits.
<u>* * * In Part</u>	For use when the Board reviews a decision and finds some aspects of it must be disposed of differently than others, e.g., “affirmed in part, reversed in part.”